

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRIAN LEE,

Plaintiff,

v.

COUNTY OF SANTA CRUZ, et al.,

Defendants.

Case No.15-cv-02231-JSC

**ORDER DISMISSING ACTION FOR
FAILURE TO SERVE PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 4(m)**

Plaintiff filed this action in May 2015. He seeks damages for the County's trespass on his land and for charging him with illegal grading and cultivation of marijuana. According to Plaintiff, the action arises out of a state court civil action initiated by the County of Santa Cruz for an injunction and penalties for the illegal grading. Plaintiff thus contends that it is premature to require service in this action until that action is resolved. Plaintiff has accordingly received numerous extensions of the deadline for service as trial in the state court action has been repeatedly continued. Most recently, on July 29, 2016, Plaintiff represented that trial was scheduled to occur in October 2016. (Dkt. No. 25.) The Court therefore continued the initial case management conference to November 17, 2016. However, on August 31, 2016, Brian Lee, the plaintiff in this action and a defendant in the related state court action, removed the state court action to federal court thus delaying trial in that action. *City of Santa Cruz v. Brian Lee, et al.*, 16-5010 LHK (Dkt. No. 1). The County's motion to remand is scheduled for hearing on February 9, 2017.

On November 28, 2016, the Court ordered Plaintiff to serve Defendants by December 30, 2016. (Dkt. No. 29.) The Court warned Plaintiff that that if he failed to file proof of service of the summons and complaint by January 5, 2017 that the action would be dismissed for failure to

1 serve. (*Id.*) To date, Plaintiff has not filed proof of service of the summons and complaint and has
2 not shown good cause for his failure to do so.

3 Federal Rule of Civil Procedure 4(m) requires service of the complaint within 90 days of
4 filing and gives the district court discretion to dismiss an action without prejudice for failure to
5 effect timely service after providing notice, and absent a showing of good cause
6 for failure to serve. *See Marroquin v. Fernandez-Carr*, No. 15-16352, 2016 WL 6892549, at *1
7 (9th Cir. Nov. 23, 2016). Because Plaintiff has failed to serve Defendants and has failed to show
8 good cause for such failure, the Court DISMISSES THIS ACTION WITHOUT PREJUDICE
9 pursuant to Federal Rule of Civil Procedure 4(m).

10 **IT IS SO ORDERED.**

11 Dated: January 19, 2017

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14 JACQUELINE SCOTT CORLEY
15 United States Magistrate Judge
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United States District Court
Northern District of California